

**NOT TO BE PUBLISHED**

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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Butte)**

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THE PEOPLE,

Plaintiff and Respondent,

v.

ANN CATHERINE MARKHAM,

Defendant and Appellant.

C050096

(Super. Ct. No. CM019607)

Defendant Ann Catherine Markham was found guilty after a court trial of felony possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and misdemeanor driving under the influence of drugs (Veh. Code, § 23152, subd. (a)). Defendant was granted probation. Among the fines and fees imposed at sentencing, the court imposed a \$300 probation revocation fine pursuant to Penal Code section 1202.44<sup>1</sup> (undesignated statutory references are to this code).

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<sup>1</sup> Penal Code section 1202.44 provides that in cases where a person receives a sentence including a period of probation the court "shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an

On appeal, defendant contends that imposing a section 1202.44 fine constitutes an impermissible ex post facto punishment because her crimes were committed prior to the enactment of the fine. Both of defendant's convictions arose from a single incident that occurred on June 16, 2004. Section 1202.44 was added and became effective on August 16, 2004. (Stats. 2004, ch. 223, § 3.)

In *People v. Callejas* (2000) 85 Cal.App.4th 667, 678, the Court of Appeal concluded that a similar provision found in section 1202.45, requiring the imposition of a parole revocation restitution fine, could not constitutionally be applied where the underlying crime preceded the enactment of the statute. Here, the Attorney General concedes that the reasoning of *Callejas* applies equally to the imposition of probation revocation restitution fines pursuant to section 1202.44. We agree, and shall order the fine stricken.

### **DISPOSITION**

The Penal Code section 1202.44 fine is stricken. As modified, the judgment is affirmed. The trial court is directed to prepare an amended judgment/sentence of formal probation and

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additional probation revocation restitution fine in the same amount." The fine becomes effective upon the revocation of probation. (*Ibid.*)

to forward a certified copy of the amended judgment to the Butte  
County Probation Department.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, NICHOLSON, Acting P. J.

\_\_\_\_\_, ROBIE, J.